IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.586/2004

Date of Decision :.27.4.2007.

Bikram Paul. …Petitioner.

Versus:

State of H.P. and others. …..Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Anup Rattan, Advocate.

For Respondents. No.1 & 2. Mr.C.B.Singh, Dy.Advocate General.

Sanjay Karol, J (Oral).

The petitioner was employed as Salesman with respondent No.10-Society. An inquiry under Section 69(1) of the H.P.Co-operative Societies Act, 1968 (hereinafter referred to as `the Act') was initiated and in terms of inquiry report dated 5th February, 2003 (Annexure:P-1), it was prima facie found that the petitioner along with other members of the Society were responsible for the loss of the goods of the Society. The petitioner as also other members were held liable to pay proportionately a sum of Rs.1,41,802/- in the manners provided for in the report itself. Subsequently, surcharge proceedings

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

under Section 69 of the 'Act' were initiated wherein the entire liability was fastened upon the petitioner alone. An appeal against the said order was preferred by the petitioner which also stood dismissed vide order dated 12th March, 2004. The challenge to the order is on the ground that no surcharge proceedings were initiated against all other members who were prima facie held to be guilty of having committed embezzlement. There is assumption that the petitioner alone was held guilty of having committed embezzlement. The order has also been assailed on the ground that no sufficient opportunity has been afforded to the petitioner in pursuing his case before the Assistant Registrar, Co-operative Societies and as such the order dated 5th February,2003 is in violation of principles of natural justice.

Notice of the writ petition was directed to be issued to all the respondents. Respondent No.1 and substituted respondent No.2 are duly represented by the learned counsel. Respondents No. 3 to 10 have chosen not to appear despite service

A perusal of the inquiry report dated 5th February, 2003 would show that the persons other than the petitioner were also held liable for having embezzled the stocks/goods of respondent No.10-Society. In this view of the matter, the proceedings against the petitioner alone ought not to have been initiated. The Assistant Registrar, Co-operative Society has wrongly assumed that the petitioner alone was held responsible for having committed embezzlement. Further no sufficient opportunity of hearing has been granted to the petitioner.

In this view of the matter, the orders dated 25th September, 2003 (Annexure:P-2) and 12th March, 2004 (Annexure:P-4) are set aside. The Assistant Registrar, Co-operative Society is directed to re-hear the matter after giving sufficient opportunity to all

the parties and decide the same in accordance with law at the earliest possible and not later than 31st July, 2007. The writ petition is accordingly disposed of with no order as to costs.

(Sanjay Karol),
Judge.

April 27, 2007(R)